

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3570 OF 1991

The Board of Trustees of the
Port of Bombay

..Petitioners

versus

Narayandas Jadhavji, since deceased
through L.Rs. Smt. Shridevi Ruparel
wd/o. Narayandas Jadhavji & Ors.

..Respondents

Mr. U. J. Makhija i/b. M/s. Mulla & Mulla and
Craigie Blunt & Caroe for the Petitioner.

None for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 6TH OCTOBER, 2006

ORAL ORDER :

1. Heard Counsel for the Petitioners.
Respondents served, nobody is present for the
respondents.

2. Petitioners filed L.E. Suit No. 237/276 of
1986 in the Court of Small Causes at Bombay for
possession of Final Plot No.84-A in Elphinstone
Estate Scheme of the Town Planning Scheme, Bombay

City No.1 against the tenant the original defendant Narayandas Jadhavji after giving him notice under Section 106 of the Transfer of Property Act. In that suit the respondent No.2 herein filed an application that they should be joined as a party defendants to the suit i.e. 2nd respondent. That application came to be dismissed because their contention was that from original tenant Narayandas Jadhavji there were different assignments to different persons and ultimately a building known as Broach Sadan consisting of ground plus five floors came to be erected or constructed on the said final Plot No. 84-A wherein the residents formed a co-operative society, which is registered under the Co-operative Societies Act. It is their contention that the plaintiffs / petitioners was aware of the interest of the society and therefore they filed application for being joined as defendants. The trial court allowed that application by order dated 17.11.1990, and, therefore this petition.

3. Mr. Makhija contended that the respondent No.2 were never the tenants of the petitioners / plaintiffs and petitioners have never recognised them as tenants of the Final Plot No.84-A. The

original tenant was Narayandas Jadhavji and if at all the respondent No.2 are in possession of the building through members as co-operative society, they can at the most obstruct execution of the decree that can be passed against the original tenant but they are not at all necessary parties, and, therefore, the impugned order should be set aside.

4. It is true atleast from the proceedings and the case made out by the plaintiffs / petitioners that Narayandas Jadhavji was the tenant of Final Plot No.84-A, therefore Narayandas Jadhavji was a necessary party but now since the respondent No.2 which is a co-operative society in respect of the building constructed on the said Final Plot No.84-A has filed application for being joined as a defendant. I do not think it will be proper to reject that application of the respondent No.2 and allow them to obstruct the decree that may be passed against the original defendant No.1 Narayandas Jadhavji, and then to appear or contest in execution of the decree.

5. It is true that as original defendant No.1 Narayandas Jadhavji was the tenant, the plaintiffs

were required to give notice to them under Section 106 of the Transfer of Property Act and no such notice was necessary to the respondent No.2 or any of its members. However, when the respondent No.2 has approached the court for being joined as a party contending that the construction of the building, formation of the society was all done within the knowledge of the plaintiffs then disallowing the application of the respondent No.2 would not be proper. Respondent No.2 may not be a necessary party but they are proper parties, in the circumstances. Therefore, no fault can be found with the order of the trial court dated 17.11.1990 on the application of the respondent No.2.

6. During the pendency of the petition, tenant - original defendant / respondent No.1 died, his heirs and legal representatives are brought on record. The trial was stayed and therefore now the petitioners / plaintiffs will be entitled to amend the plaint to bring those heirs and legal representatives on record before the trial court. If such an application is made by the plaintiffs before the trial court, the trial court will allow the said application.

7. In the result, the petition is disposed of. Rule is discharged. It is clarified that the petitioners - plaintiffs will be at liberty to amend the plaint to challenge the right, title and interest of the respondent No.2.

(D.G. DESHPANDE, J.)